

SCHEDULES

SCHEDULE 13

Section 109

THE HEALTH SERVICES SAFETY INVESTIGATIONS BODY

PART 1

CONSTITUTION

Status

- 1 (1) The HSSIB is not to be regarded—
 - (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The HSSIB's property is not to be regarded—
 - (a) as the property of the Crown, or
 - (b) as property held on behalf of the Crown.

Membership

- 2 (1) The HSSIB is to consist of—
 - (a) a Chief Investigator appointed in accordance with paragraph 3,
 - (b) other members appointed in accordance with paragraph 4, and
 - (c) a chair and at least four other members appointed by the Secretary of State.
- (2) The Chief Investigator is to be the chief executive of the HSSIB.
- (3) The HSSIB must have more non-executive than executive members.
- (4) In this Schedule—
 - (a) references to executive members of the HSSIB are references to the members mentioned in sub-paragraph (1)(a) and (b), and
 - (b) references to non-executive members of the HSSIB are references to the members mentioned in sub-paragraph (1)(c).

The Chief Investigator: appointment and status

- 3 (1) The Chief Investigator is to be appointed by the non-executive members with the consent of the Secretary of State.
- (2) The Chief Investigator is to be an employee of the HSSIB.

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Other executive members: appointment and status

- 4 (1) The other executive members of the HSSIB are to be appointed by the non-executive members.
- (2) The non-executive members may not appoint more than five other executive members without the consent of the Secretary of State.
- (3) The other executive members are to be employees of the HSSIB.

Non-executive members: tenure

- 5 (1) A person holds and vacates office as a non-executive member of the HSSIB in accordance with that person's terms of appointment (subject to the following provisions of this paragraph).
- (2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—
 - (a) incapacity,
 - (b) misbehaviour, or
 - (c) failure to carry out the person's duties as a non-executive member.
- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (3).
- (5) A person may be appointed as a non-executive member for an initial term of up to three years.
- (6) A person who has been appointed as a non-executive member for an initial term may be re-appointed, but only for one further term of up to three years.
- (7) The further term must begin at the end of the initial term.

Non-executive members: suspension from office

- 6 (1) This paragraph applies where a person is suspended under paragraph 5(4).
- (2) The Secretary of State must give notice of the decision to suspend to the person.
- (3) The suspension takes effect on receipt by the person of the notice.
- (4) The notice may be—
 - (a) delivered in person (in which case the person is taken to receive it when it is delivered), or
 - (b) sent by first class post to the person's last known address (in which case the person is taken to receive it on the third day after the day on which it is posted).
- (5) The initial period of suspension must not exceed six months.
- (6) The Secretary of State may review the suspension at any time.
- (7) The Secretary of State—

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- (a) must review the suspension if requested in writing by the person to do so, but
 - (b) is not required to review the suspension before the end of the period of three months beginning with the start of the initial period of suspension.
- (8) Following a review during a period of suspension, the Secretary of State may—
 - (a) confirm the suspension,
 - (b) revoke the suspension, or
 - (c) suspend the person for another period of not more than six months beginning with the expiry of the current period.
- (9) The Secretary of State must revoke the suspension if the Secretary of State—
 - (a) decides that there are no grounds to remove the person from office under paragraph 5(3), or
 - (b) decides that there are grounds to do so but does not remove the person from office under that provision.
- 7 (1) Where a person is suspended from office as the chair under paragraph 5(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair's functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of—
 - (a) the period ending with either—
 - (i) the appointment of a new chair, or
 - (ii) the revocation or expiry of the existing chair's suspension, and
 - (b) the remainder of the interim chair's term as a non-executive member.
- (3) Sub-paragraph (4) applies if—
 - (a) a person's initial term as interim chair is to cease as a result of the expiry of the person's initial term as a non-executive member, and
 - (b) that person is to be re-appointed as a non-executive member.
- (4) The person may be re-appointed as interim chair for a further term determined in accordance with sub-paragraph (2).
- (5) That further term must begin at the end of the person's initial term as interim chair.

Non-executive members: payment

- 8 (1) The HSSIB must pay to the non-executive members such remuneration as the Secretary of State may determine.
- (2) The HSSIB must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member.
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the HSSIB must pay compensation to the person of such amount as the Secretary of State may determine.

Staff

- 9 (1) The HSSIB may appoint such persons to be employees of the HSSIB as it considers appropriate.

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- (2) Employees of the HSSIB are to be paid such remuneration as the HSSIB may determine.
- (3) Employees of the HSSIB are to be appointed on such other terms and conditions as the HSSIB may determine.
- (4) The HSSIB may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the HSSIB.
- (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), the HSSIB must obtain the approval of the Secretary of State to its policy on that matter.

Procedure

- 10 (1) The HSSIB may regulate its own procedure.
- (2) The validity of any act of the HSSIB is not affected by any vacancy among the members or by any defect in the appointment of any member.

Committees

- 11 (1) The HSSIB may appoint such committees and sub-committees as it considers appropriate.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of the HSSIB.
- (3) The HSSIB may pay such remuneration and allowances as it may determine to any person who—
 - (a) is a member of a committee or a sub-committee, but
 - (b) is not an employee of the HSSIB,whether or not that person is a non-executive member of the HSSIB.
- (4) Before making a determination as to remuneration or allowances for the purposes of sub-paragraph (3), the HSSIB must consult the Secretary of State.

Exercise of functions

- 12 (1) The HSSIB must exercise the functions conferred on it by this Part effectively, efficiently and economically.
- (2) The HSSIB may arrange for the exercise of any of its functions on its behalf by—
 - (a) any non-executive member,
 - (b) any employee (including any executive member), or
 - (c) a committee or sub-committee.

Assistance in exercise of functions

- 13 (1) The HSSIB may arrange for persons to assist it in the exercise of its functions in relation to—
 - (a) a particular case, or

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(b) cases of a particular description.

(2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

Funding

14 (1) The Secretary of State may make payments to the HSSIB out of money provided by Parliament of such amounts as the Secretary of State considers appropriate.

(2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State considers appropriate.

Supplementary powers

15 (1) The HSSIB may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on it by this Part.

(2) The power under sub-paragraph (1) includes power for the HSSIB to do the following—

- (a) enter into agreements;
- (b) acquire and dispose of property;
- (c) supply materials, facilities and services to any person;
- (d) develop and exploit ideas and exploit intellectual property.

(3) But the HSSIB requires the consent of the Secretary of State to borrow money temporarily by way of overdraft.

Use of income from charges

16 Where the HSSIB receives income from imposing charges under section 127(8) or 128(4), it must ensure that the income is used for exercising its functions.

Losses and liabilities etc

17 (1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if the HSSIB were an authority of the kind referred to in that section.

(2) In its application to the HSSIB as a result of sub-paragraph (1), section 265 of that Act has effect as if the references in that section to that Act were references to this Part of this Act.

Accounts

18 (1) The HSSIB must keep proper accounts and proper records in relation to the accounts.

(2) The Secretary of State may give directions to the HSSIB as to—

- (a) the content and form of its accounts, and
- (b) the methods and principles to be applied in the preparation of its accounts.

19 (1) The HSSIB must prepare annual accounts in respect of each financial year.

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- (2) The HSSIB must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.
- (3) The Comptroller and Auditor General must—
 - (a) examine, certify and report on the annual accounts, and
 - (b) lay copies of them and the report before Parliament.
- (4) In this paragraph and paragraph 20, “financial year” means a period of 12 months ending with 31 March.

Reports and other information

- 20
- (1) As soon as practicable after the end of each financial year, the HSSIB must prepare an annual report on how it has exercised its functions during the financial year to which the report relates.
 - (2) The report must, among other things, set out the measures that the HSSIB has taken to ensure that its functions are exercised effectively, efficiently and economically.
 - (3) The HSSIB must send a copy of the report to the Secretary of State.
 - (4) The Secretary of State must lay a copy of the report before Parliament.
 - (5) The HSSIB must publish the report once it has been laid before Parliament.
 - (6) Subject to sub-paragraph (7), the Secretary of State may require the HSSIB to provide to the Secretary of State such other reports and information relating to the exercise of its functions as the Secretary of State may request.
 - (7) The Secretary of State may not require the HSSIB to provide any reports or information that relate to an investigation that the HSSIB is carrying out or has carried out.

Seal and signature

- 21
- (1) The application of the HSSIB’s seal must be authenticated by the signature of any member of the HSSIB or any other person who has been authorised (generally or specially) for that purpose.
 - (2) A document purporting to be duly executed under the HSSIB’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

PART 2

TRANSFER SCHEMES

- 22
- (1) The Secretary of State may, in connection with the establishment of the HSSIB by this Act, make one or more transfer schemes.
 - (2) A “transfer scheme” is a scheme for the transfer to the HSSIB of any property, rights or liabilities of NHS England relating to the discharge of NHS England’s functions pursuant to any directions made by the Secretary of State under the power conferred by section 44 which are in force at the time the scheme is made.

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- (3) The things that may be transferred under a transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities.
- (4) A transfer scheme may—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done by, on behalf of or in relation to NHS England in respect of anything transferred;
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to NHS England in respect of anything transferred;
 - (d) make provision for references to NHS England in an instrument or other document in respect of anything transferred to be treated as references to the HSSIB;
 - (e) make provision for the shared ownership or use of property;
 - (f) make provision which is the same as or similar to the TUPE regulations;
 - (g) make other consequential, supplementary, incidental or transitional provision.
- (5) A transfer scheme may provide—
- (a) for modifications by agreement;
 - (b) for modifications to have effect from the date when the original scheme came into effect.
- (6) In sub-paragraph (4)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (7) For the purposes of this paragraph—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
 - (b) references to the transfer of property include the grant of a lease.
- (8) For the purposes of sub-paragraph (7)(a)—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual’s employment in the civil service of the State are to be regarded as constituting the terms of the contract of employment.
- 23 (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred under a scheme under paragraph 22, or
 - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under sub-paragraph (1)(a) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;

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- (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
 - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under sub-paragraph (1)(b) includes in particular provision for—
 - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
 - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
 - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) Regulations under this paragraph are subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this paragraph references to the transfer of property include the grant of a lease.
- (6) In this paragraph—
 - “relevant tax” means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;
 - “tax provision” means a provision of an enactment about a relevant tax.